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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MAYES, MELVIN C

ART UNIT PAPER NUMBER

1734

DATE MAILED: 08/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/701,927

Applicant(s)

GUNTER ET AL.

Examiner

Melvin Curtis Mayes

Art Unit

1734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9 and 11-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-34 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,9,11-21 and 24-31 is/are rejected.
- 7) ☒ Claim(s) 3,6,7,22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

(1)

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

(2)

Claims 1, 2, 4, 5, 9, 11-21 and 24-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Menayan 5,417,794 in view of Lindee 4,243,466.

Menayan 5,417,794 discloses a method and apparatus for disposing tubular (jacket) labels on a containers comprising: using finger assembly 60 (separating or spreading jaw unit) of pair of opposed inner fingers 62A,62B and outer grippers or fingers 64A,64B to engage the leading end of a tubular label, the finger assembly movable downwardly to apply the label to a container (pull-over application) placed on an article support 24 on rotating plate 16 (conveyor) which transports the containers at a constant level during label application, the container fed to and from the rotating plate via feed mechanisms 130,142 (star wheels). A plurality of tubular label applying stations each having a finger assembly and article support continuously perform label applying operations. The finger assembly at each applying station is mounted on a carriage 72 for vertical movement using a cam track assembly (col. 7-14). Menayan does not disclose a holding device for holding the container by positive or friction lock prior to pull-over application, temporarily releasing the container and seizing the container and label when the label has been applied to the container.

Lindee 4,243,466 teaches that a labeling apparatus for applying sleeve (jacket) labels using label grippers is also provided with container clamps to insure consistent label application and so that container movement is at all times positively controlled and maintained a predetermined position throughout the container's movement to the opened label, while the same is being inserted into the open label and while the labeled container is removed from the labeling station. The container clamps clamp the unlabeled container, momentarily release their grip on the container as the label is being applied to the container and regrip the container and the sleeve label. The container clamps can be a pair of vertical support arms 60,60 (shafts) each mounting a clamp 61 (arm) faced with sponge rubber pad 66 and adapted to grip the exterior of the container when moved toward one another by actuators, each clamp having the shape of the exterior of the container (Abstract, col. 2, lines 49-57, col. 4, line 60 – col. 4, line 24col. 7, lines 20-61).

It would have been obvious to one of ordinary skill in the art to have modified the method and apparatus of Menayan for disposing tubular (jacket) labels on containers by providing the apparatus with container clamps (holding device) in addition to the finger assembly (separating or spreading jaw unit), as taught by Lindee, to insure consistent jacket label application by positively controlling container movement and maintaining predetermined position during labeling. Using the container clamps in combination with the finger assembly in the label applying station for applying the tubular label by clamping the container with the clamps, momentarily releasing their grip as the label is being pulled over the container by the finger assembly and regripping the container and label by the clamps before releasing the finger assembly from the label, as claimed in Claim 1, would have been obvious to one of ordinary skill in the art, as taught or suggested by Lindee, to maintain the position of the container during

Art Unit: 1734

labeling for consistent label application by using clamps to hold the container before and after the jacket label is being applied.

By providing container clamps in the method and apparatus of Menayan, while a container is transported at a constant level on the article support on the rotating plate, the clamps release and regrip the container during label application downwardly over the container, and thus the control of the clamps by actuators is a function of the transport of the container along the transport path, as claimed.

Providing each of the label applying stations with container clamps of oppositely movable arms faced with rubber pad (non-slip surface), of shape of the exterior of the container and mounted on vertical shafts, as claimed, would have been obvious to one ordinary skill in the art, as taught by Lindee. The use of two rotating tables, as claimed in Claim 24, would have been obvious to one of ordinary skill in the art to increase speed of labeling of containers.

Allowable Subject Matter

(3)

Claims 32-34 are allowed.

(4)

Claims 3, 6, 7, 22 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

(5)

Applicant's arguments filed May 25, 2005 have been fully considered but they are not persuasive.

Applicant argues that Menayan does not disclose a holding device controlled as a function of the transport movement of the object and argues that Lindee fails to disclose transporting the object along a constant level or controlling holding devices as a function of transport movement.

(6)

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In this case, Menayan discloses continuously transporting a container during pull-over label jacket application. Lindee is pertinent because it teaches that when applying jacket labels, container clamps should be provided to insure consistent label application and so that container movement is at all times positively controlled and maintained a predetermined position throughout the container's movement to the opened label. While in Menayan the container stays at a constant level while the label is pulled down over the container and in Lindee, the label is stationary while the container is pushed up into the label, the teaching of Lindee is pertinent in either case of movement. The Examiner's position is that the teaching of Lindee is also pertinent to the method and apparatus of Menayan to positively control and maintain the position of the

Art Unit: 1734

container during label application. One of ordinary skill in the art would have known how to adapt the teaching of Lindee to the continuous label process and apparatus of Menayan to achieve positive control of the container during label application for consistent label application.

Conclusion

(7)

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1734


(8)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin Curtis Mayes whose telephone number is 571-272-1234.

The examiner can normally be reached on Mon-Fri 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Melvin Curtis Mayes
Primary Examiner
Art Unit 1734

MCM
August 11, 2005